

S/N 08/675,572

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	WOOLFORD et al.	Examiner:	D. Taylor
Serial No.:	08/921,481	Group Art Unit:	3506
Filed:	September 2, 1997	Docket No.:	3616.20USF1
Title:	COMPOSITE MASONRY BLOCK		

#17

INFORMATION DISCLOSURE STATEMENT

Assistant Commissioner for Patents
Washington, D.C. 20231

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GROUP 3500

Dear Sir:

This information disclosure statement is submitted with three months of the filing of this continuation application. No fee is due.

REMARKS

Following the allowance of the parent application on which the present application is based, and before payment of the issue fee, the Applicants became aware of the issuance of U.S. Design Patent 380,560, which is owned by Keystone Retaining Wall Systems, Inc.

The present application was filed in order to bring that reference and the activities of Keystone to the attention of the Examiner.

The Applicant (Anchor Wall Systems, Inc.) and Keystone are not strangers. Both are located in the Minneapolis, Minnesota metropolitan area, and an affiliate of Anchor has in the past produced blocks for Keystone. Keystone and Anchor are competitors, and both license their block designs to others. Neither company produces blocks on a commercial scale. Both have an active patent acquisition program, and there has been litigation in the past between the parties and/or their licensees, both in the USA and elsewhere. Some of that litigation is still pending.

Anchor has been aware that Keystone has marketed, since mid-1990, a retaining wall block ("Garden Wall") similar to the one that is the subject of the present application. During prosecution of Anchor's series of patent applications, Anchor has cited those activities of Keystone as infringing activities. It has been, and continues to be, Anchor's belief that the Garden Wall product was an imitation of the Anchor Diamond block, which was introduced in mid-1989, and that Keystone's subsequent introduction of the Garden Wall in mid 1990 was made in response to the introduction of the Diamond block.

As a result of the above-noted litigation and recent related discussions between Anchor and Keystone, Anchor is aware of certain allegations of Keystone as to the history of the development and introduction of the Garden Wall, and certain documents relating to that subject. Anchor has invited Keystone to provide credible evidence of Keystone's conception and reduction to practice of Keystone's Garden Wall block but Keystone has been unable or unwilling to do so. Keystone's allegations and the documents are uncorroborated hearsay and do not present a prima facie case of unpatentability of the presently claimed inventions. Nonetheless, Anchor wishes to apprise the Examiner of the existence of these documents.

Taken in the *best light*, it is Anchor's view that the allegations and documents (including U.S. Design Patent No. 380,560) show a *conception* or *derivation* of the related design by Keystone in 1989 prior to the effective filing date of the present application (but after Anchor's conception) followed by a reduction to practice and sale of the blocks by Keystone in mid 1990, well after the earlier manufacture, sale and publication in the summer of 1989 of Anchor's commercial embodiment of the blocks described and claimed in the present application. In fact, Anchor has received information that the related blocks of Keystone were produced in response

to Anchor's introduction of the Diamond blocks in the summer of 1989 (i.e. derivation). Anchor has also obtained internal documents of Keystone showing that Keystone's product was not yet fully developed and tested before 1990 and the earliest known activities by Keystone's licensees showing sales of their block (called "Garden Wall") occurred in June 1990 which is well after the effective filing date of the present application.

Anchor was well aware of the 1990 activities of Keystone and its licensees, and during prosecution of Anchor's series of patent applications, Anchor cited the activities of Keystone as infringing activities.

Accordingly, the following documents are brought to the attention of the Examiner. While it is believed that the facts support the Applicants' arguments for patentability, should the Examiner wish to review and copy any additional documents (including the full text of any deposition transcripts), he is invited to inspect any of the litigation files or other documents of Keystone that are in the possession, custody or control of Anchor. Since the documents are located in Minneapolis, Minnesota, Anchor is willing to reimburse the USPTO for the out-of-pocket expenses for any such inspection trip.

The Applicants' and their assignee wish to apprise the United States Patent and Trademark Office of the following materials:

U.S. Copyright Registration TX 2 807 652;
U.S. Copyright Registration TX 2 798 584;
Keystone internal memorandum, March 21, 1989, Dave Jenkyns to Dave Bear;
letter, March 21, 1989, David Bear to Tim Bakke;
drawing, 3/22/89, "Garden Unit";
letter, March 29, 1989, Cynthia A. Verdine to Paul Forsberg, with enclosed quote;
letter, March 29, 1989, Cynthia A. Verdine to Paul Forsberg;
drawing, 890331, "Garden Unit";
Keystone internal memorandum, April 28, 1989, Dave Jenkyns to Dave Bear;
"3 easy holdups", from July 1989 issue of Popular Science;

Minn Key Licensee Monthly Report for the period 5/1/90 through 5/31/90;
Minn Key Licensee Monthly Report for the period 6/1/90 through 6/30/90;
letter, July 18, 1990, William R. Baach to Lonn Hanson of Minn Key
excerpts from deposition testimony of Paul J. Forsberg;
excerpts from deposition testimony of Robert McDonald;
U.S. Design Patent No. 380,560.

No representation is made that any publications provided herewith are "prior art" within the meaning of 35 U.S.C. §§ 102 and 103 and Applicants reserve the right, pursuant to 37 C.F.R. § 1.131 or otherwise, to establish that the reference(s) are not "prior art." Moreover, Applicants do not represent that a reference has been thoroughly reviewed or that any relevance of any portion of a reference is intended.

Consideration of the items listed is respectfully requested. Pursuant to the provisions of M.P.E.P. 609, it is requested that the Examiner return a copy of the attached Form 1449, marked as being considered and initialed by the Examiner, to the undersigned with the next official communication.

Please charge any additional fees or credit any overpayment to Deposit Account No. 13-2725.

Further consideration and allowance of this application is requested.


Respectfully submitted,

WOOLFORD ET AL.,

By their attorneys,

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Date: November 12, 1997



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